

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2727 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

KODINAR TALUKA CO-OP BANKING UNION LTD

Versus

STATE OF GUJARAT

Appearance:

MR SHIRISH JOSHI for Petitioner

MR VB GHARANIA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 27/01/98

ORAL JUDGEMENT

The matter came up before this Court on Civil Application No. 736 of 1993 which has been found to be infructuous and the same has been disposed of today by a separate order. Both the sides agree to the Court's suggestion that the main matter itself may be heard and disposed of right today as the matter is as old as of 1990 and the main order pertains to the holding of the election and the inclusion of the petitioner society in the category under section 74C(1)(vii) of Gujarat Co-operative Societies Act, 1961.

The present Special Civil Application is directed against the order dated 16.1.1990 (Annexure 'A') passed by the Under Secretary of the Co-operative Department of the Government of Gujarat and the order dated 13.2.1990 issued by the District Registrar, Co-operative Societies, Amreli, district Amreli.

The petitioner i.e. the Kodinar Taluka Co-operative Banking Union Limited, Kodinar, district Amreli was established in the year 1912 under the then Bombay State and has been functioning as Co-operative Bank in the Kodinar Taluka of Amreli district. According to the petitioner this banking union is a federal society having many societies in Kodinar taluka as its members and at the end of the Co-operative year 1988-89, it had 121 societies as its members and 70 individual members. The petitioner has collected deposits from Co-operative Societies and individuals and as on 30.6.1989 it had Rs.692.68 lacs in deposits. The petitioner's area of operation is limited to only the Kodinar taluka of Amreli district. The petitioner's case is that it has been holding elections according to its bye-laws year by year and the last election at the time of filing of this Special Civil Application was held in August, 1989 for the year 1989-90.

The Under Secretary to the Government, Co-operative Department, State of Gujarat issued order dated 16.1.1990 in the name of Governor of Gujarat, in exercise of the powers conferred under clause (vii) of sub-section (1) of section 74C of the Gujarat Co-operative Societies Act, 1961, which will be hereinafter referred to as the 'Act'. By this order, the Government of Gujarat specified Kodinar Taluka Co-operative Bank's Union Limited, Kodinar as Co-operative Society for the purpose of provision of section 74C. This order dated 16.1.1990 and the consequential order dated 13.2.1990 passed by the District Registrar of Co-operative Societies, Amreli have been challenged by the petitioner on the ground that the petitioner society could not be specified under section 74C of the Act and the inclusion of the petitioner society under section 74C has adverse consequence to the petitioner. This Special Civil Application challenging the order dated 16.1.1990 and the order dated 13.2.1990 was filed in this Court on 7.3.1990. Notice was issued on 26.3.1990 and ad-interim order in terms of para 12(B) was passed. Thereafter, rule was issued on 8.8.1991 and the parties were directed to maintain statusquo as on that day. It is submitted by Mr. Shirish Joshi on behalf

of the petitioner that even thereafter the elections of the petitioner society have been held in accordance with its bye-laws.

The petitioner society is to be treated as a society within the meaning of section 2(19) of the Gujarat Co-operative Societies Act, 1961 in the light of the provisions contained in terms of section 6(4) of the Act.

Sections 2(19) and 6(4) are reproduced as under :

"2(19) "Society" means a Co-operative Society registered, or deemed to be registered, under this Act;"

"6(4) Nothing in this Act shall be deemed to effect the registration of any society made before the commencement of this Act."

Now the impugned order dated 16.1.1990 which has been passed under section 74C(1)(vii) of the Act and the same is reproduced as under :

"(vii) any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time specify in this behalf, regard being had to the financial position and share capital of such institutions".

Clause 7 of section 74C(1)(vii) reproduced as above leaves no room of doubt that the petitioner society is a society which could be specified as such by general or special order by the government having regard to its financial position and share capital. Mr.Joshi has submitted that the government could not include or could not specify the petitioner society and could not deal with it under section 74C(1)(vii) without hearing the petitioner society and he has also submitted that the petitioner society has been discriminated inasmuch as Rajkot Nagrik Sahakari Bank and Ahmedabad Peoples Co-operative Bank have not been included under clause (vii) of section 74C(1) and they have not been specified although the case of the petitioner society is identical with the aforesaid two named institutions.

I have heard learned counsel for both the sides. One fails to understand as to how specifying the name of the petitioner society under clause (vii) of section 74C(1) is uncalled for. Clause (vii) takes within its

scope and ambit any other society or class of societies other than those which are specifically named in earlier clause of section 74C(1). Strictly speaking clause (vii) is residuary clause of wide import taking within its sweep other societies or class of societies which the State Government may by general or special order specify in this behalf, regard being held to the financial position and share capital of such institution. There is no substance in the contention of Mr. Shirish Joshi that the order dated 16.1.1998 does not disclose that regard was kept to the financial position and share capital of the petitioner. Once the government has specified the petitioner's name under section 74C(1)(vii), in view of the presumption of the regularity of the Official acts under Sec. 114 of the Indian Evidence Act, it cannot be said that the government had ignored the requirement mentioned in clause (vii). It is the petitioner's own pleading that it has deposits from Co-operative Societies as well as individuals and on 30.6.1989 it had deposit of Rs. 692.68 lacs. It is unbelievable that the State Government while exercising its powers under section 74C(1) under clause (vii) remained oblivious to the requirement mentioned in the section itself. There is no denial of the legal principles that presumption of the Regularity of Official acts is rebuttable but in the facts of the present case the petitioner has failed to discharge this burden of rebutting such a presumption. No material whatsoever has been placed on record to rebut such a presumption. No facts have been pleaded with regard to other two institutions viz. Rajkot Nagrik Sahakari Bank Ltd. and Ahmedabad Peoples Co-operative Bank so as to claim the parity with these institutions and pleadings of the petitioner itself, with regard to its funds and deposits make it clear that Government could in the facts of this case deal with and specify the petitioner as society under clause (vii) of section 74C(1). Merely because the statutory requirement under section 74C itself enables the government to nominate its representatives on the committee of such society under section 80, it cannot be said that the petitioner society is going to suffer any penal or adverse consequences on the basis of the order dated 16.1.1990 so as to make a grievance with regard to right or opportunity of hearing or grievance with regard to the violation of the principles of natural justice. No doubt the principles of natural justice are primordial in character but they cannot be pressed into service in a specific case when the statute itself impliedly or expressly excludes such requirement. There is no requirement under section 74C(1) that the society sought to be specified under clause (vii) must be given a prior opportunity of hearing

before it is so specified under clause (vii). The argument of the learned counsel for the petitioner that several other sections of this Act have been held to be intra vires by this Court only on the ground of implied requirement of following the principles of natural justice, does not impinge either upon the validity of section 74C(1) (vii) or the action taken thereunder or the orders passed thereunder. In any case the Court is fully convinced that in specifying a society for the purpose of its inclusion under clause (vii) of 74C(1) no opportunity is required to be given as there is no adverse consequence and merely because under section 80, the government can nominate its representative on a committee of such a society specified under clause (vii) of section 74C(1) it is hardly sufficient to give rise to the plea of violation of principles of natural justice or to claim the requirement of following the principles of natural justice when no such opportunity is contemplated under the Act and no effective or real prejudice is caused to the society, if the Government nominates its representative on the committee or decides to hold elections of such societies through the Collector. On 3.2.1990, the District Registrar, Co-operative Societies, Amreli had already ordered that whereas the petitioner society had been included and specified under section 74C(1)(vii), the elections of the Managing Committee of the Society were to be held according to the existing bye-laws by the Deputy Registrar of the Gujarat High Court. Such an order to hold an election through Deputy Registrar of the High Court was passed on account of some orders passed by the Hon'ble Supreme Court during the pendency of certain litigation. The Court is informed that this litigation is now over and if at all any elections are to be held now they are to be held by the Collector under Chapter 11A of the Act.

The Court does not find any basis to interfere with any of the impugned orders. There is no substance in this Special Civil Application, the same is hereby dismissed and the interim orders stand automatically vacated. Rule is hereby discharged. The learned counsel for the petitioner has prayed that this order be stayed for two weeks. There is no question of staying the order on rejection of the petition when Special Civil Application has itself been decided and the rule has been discharged today.

m.m.bhatt

